voluntarily after the caution was read to him.

The second appellant, Lee, said that at Labis on 13th September he was questioned by Inspector Liew who told him he was telling lies and beat him. He and the first appellant were then shown a dead body and were told if they did not co-operate with the Government they would be like the dead body. The following morning he was taken to Johore Bahru where he was questioned by Inspector Foong and Inspector Chan. They told him he was telling lies but did not do anything to him. The following day, 15th September, he was again questioned by Inspector Foong and Inspector Chan and again nothing happened to him. That night about midnight he was taken back to Labis where he was asked if he could identify a man with a swollen face. He was then taken back to Johore Bahru and had no sleep that night. The following morning, 16th September, he was questioned by a fat Chinese who asked him co-operate with the Government. He was then asked some questions but was not assaulted and was not threatened in any way. The following day, 17th September, he was back at Segamat where he was questioned by Superintendent Abdullah. He admitted that he was cautioned but said he did not understand the caution fully. He made his statement because he was questioned and had previously been assaulted.

On that material there is no real cause to doubt the evidence of Superintendent Abdullah and his interpreter as to the circumstances in which the statements of the appellants were taken on 17th September. There is no allegation of any impropriety of any sort and little if any possibility of the caution which was admittedly administered being misunderstood.

There was, however, acute conflict of testimony between the prosecution witnesses and the two appellants as to what happened to the appellants while in custody prior to 17th September. That evidence was examined in detail by the trial judge who came to the conclusion that neither of appellants was assaulted on 13th September while in the custody of Inspector Liew and neither of them was assaulted subsequently while they were in the custody of Inspector Foong and Inspector Chan at Johore Bahru. He was also satisfied that the statutory caution was properly administered to both the appellants by Superintendent Abdullah and his interpreter. In the circumstances he came to the conclusion that the statements were made voluntarily and after administration of the statutory caution and with this conclusion we see no reason to quarrel.

In any event we would observe that quite apart from the statements there was ample evidence which, if believed and it was believed by the trial judge, was sufficient to support the conclusions at which he arrived. In our view it was evidence on which no reasonable trier of fact could have come to any other conclusions.

The appeals are dismissed.

Appeals dismissed.

LAW KIAT LANG v. PUBLIC PROSECUTOR

[F.C. (Thomson L.P., Ong Hock Thye Ag.C.J. (Malaya) and Suffian J.) December 28, 1965]

[K.L. — Federal Court Criminal Appeal No. X16 of 1965]

Internal Security — Possession of firearm and ammunition — Consorting with Indonesian Armed Forces — Admissibility of statements — Courts of Judicature Act, 1964, s. 60(1) — Internal Security Act, 1960, ss. 57(1) & 58(1).

Internal Security — Security area — Whether airspace forms part of.

The appellant were convicted on charges of consorting with members of the Indonesian armed forces and possession of a firearm and ammunition. The main grounds of appeal were (1) that the appellant did not know that the expedition which took part was intended to be an invasion and even if the object was invasion, there was no evidence as to what particular purpose, if any, prejudicial to public security the invaders intended to effect; (2) that the statement of the appellant was wrongly admitted in evidence. It was alleged that the appellant had been subjected to assaults and questioning for intelligence purposes and that the statement given by him was not a voluntary one. It appeared that the dates stated in the first charge was wrong but they were not amended.

Held: (1) clearly the expedition in this case was an unlawful one calculated to affect the public security;

(2) the court saw no reason to disagree with the view of the trial judge who heard the evidence and found that the statement was voluntarily made but even if the court was satisfied that the statement had been wrongly admitted, the case would clearly come within the proviso to section 60(1) of the Courts of Judicature Act;

(3) the mistake in the first charge could not be regarded as material as the date was not an essential part of the alleged offence.

Cases referred to:—

(1) *Tan Hua Lam* v. *Public Prosecutor* [1966] 1 M.L.J. 147.

(2) *R.* v. *Severo Dossi* (1918), 13 Cr.App.R. 158, 159.

(3) *R.* v. *Stirland* (1944), 30 Cr.App.R. 40; [1944] A.C. 315; [1944] 2 All E.R. 13.

FEDERAL COURT.

T. T. Rajah for the appellant.

Ajaib Singh (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Thomson L.P.: This is another appeal arising out of the Indonesian invasion near Labis on the night of 1st/2nd September, 1964, with which we were concerned in the case of *Tan Hua Lam* v. *Public Prosecutor*.[1]

On the morning of 4th September the present appellant was arrested and he was thought to have been one of the armed men who had left by parachute the aircraft which figured in that

case. He was prosecuted on three charges under the Internal Security Act, 1960. These charges were as follows:—

"*1 Charge*: That you between 2.00 a.m. on the 2nd day of September, 1964 and 12.00 noon on the 4th day of September, 1964, in a Security Area as proclaimed by the Yang di-Pertuan Agong vide Federal L.N. 245 of 17th August, 1964, namely 2½ milestone Labis/Paya Merah Road, Labis, in the District of Segamat, in the State of Johore, consorted with members of the Indonesian armed forces who carried firearms and ammunition in contravention of the provisions of section 57 of the Internal Security Act, 1960, in circumstances which raised a reasonable presumption that you intended to act with such members of the said Indonesian armed forces in a manner prejudicial to public security and that you thereby committed an offence punishable under section 58(1) of the Internal Security Act, 1960.

2nd Charge: That you at about 2.00 a.m. on the 2nd day of September, 1964, in a Security Area as proclaimed by the Yang di-Pertuan Agong by Federal L.N. 245 dated 17th August, 1964, namely 2½ milestone, Labis/Paya Merah Road, Labis, in the District of Segamat, in the State of Johore, without lawful excuse had in your possession of firearm, to wit, a sten gun, without lawful authority and that you have thereby committed an offence punishable under section 57(1)(a) of the Internal Security Act, 1960.

3rd Charge: That you at about 2.00 a.m. on the 2nd day of September, 1964, in a Security Area as proclaimed by the Yang di-Pertuan Agong by Federal L.N. 245 dated 17th August, 1964, namely 2½ milestone, Labis/Paya Merah Road, Labis, in the District of Segamat, in the State of Johore, without lawful excuse had in your possession ammunition, to wit, 300 rounds of 9 mm ammunition and two handgrenades, without lawful authority and that you have thereby committed an offence punishable under section 57(1)(b) of the Internal Security Act, 1960."

With regard to the first of these charges, the dates are wrong and the charge was at no time amended. This in itself, however, is without importance. As was observed by Atkin J. in the case of *Severo Dossi*:— [(2)]

"From time immemorial a date specified in an indictment has never been a material matter unless it is actually an essential part of the alleged offence."

In the event the appellant was convicted on all three charges and was sentenced to death.

Against these convictions he has now appealed.

The prosecution evidence was as follows and, as regards events prior to the arrest of the appellant, that evidence has never been contradicted by him except on one point when he was giving evidence in the course of the trial in connection with the admissibility of a statement alleged to have been made to the police, for when after the close of the prosecution case he was called on to make his defence he remained silent.

First there was the evidence of Lieutenant Sutikno, the Commanding Officer of the jumping party in the aircraft, and of two of the Indonesian soldiers who were members of the party all of whom were captured after landing and were subsequently treated as prisoners of war under the Geneva Conventions.

Lieutenant Sutikno said that on 1st September, 1964, in Jakarta he was ordered to proceed to Malaysia in charge of a party of 47 men of whom 34 were Indonesian soldiers and 14 were Malaysians. The appellant was one of the latter. The party left Jakarta and proceeded to Medan. They left Medan about 9 p.m. Every member of the party then carried a firearm of some sort, ammunition, two handgrenades and other equipment including a compass and a whistle. He thought the appellant's weapon was a sten gun. The destination of the expedition was Malaysia, but that was a secret known only to the witness. In the aircraft each member of the party was given a packet containing $300 in $1 Malaysian currency notes. At about 2 a.m. on 2nd September the party jumped. He himself landed about 75 yards from the school in Kampong Tenang, near Labis, a place which according to a survey department map is some 40 miles east of the coast of Johore and some 12 miles west of the Johore/Pahang border which in that region runs through jungle country.

Tobi Tabrani said he was a Private Class II in the Indonesian army. He was one of the party in the aircraft commanded by Lieutenant Sutikno. The appellant was also one of the party and was in his section and was carrying a sten gun, 2 handgrenades and ammunition. Each of the party including the appellant was given $300 in $1 Malaysian currency notes. This was wrapped in plastic and at the time the witness did not see what it was. The appellant jumped from the aircraft before he did. When the party left Indonesia they were told they were being taken for training somewhere in Indonesia and when he himself landed he thought at first he had landed in Indonesia.

Ahmad Surahman said he was a private in the Indonesian army and also one of the party in the aircraft commanded by Lieutenant Sutikno. He gave evidence similar to that of private Tobi Tabrani but the trial judge said that he formed the impression that it would be dangerous to rely on his evidence identifying the appellant as one of the Malaysians in the aircraft because he was not in the same section as the appellant and had seen him for the first time only that afternoon in the aircraft.

The judge regarded the evidence of these witnesses as that of accomplices but though he believed it he did not find it necessary to consider whether by itself it was sufficient to support convictions because, in his view, there was corroboration in other parts of the evidence.

This corroboration he found in the evidence as to the circumstances in which the appellant was arrested.

On 4th September about 9.30 a.m. near

Labis a kampong worker named Haron bin Othman met the appellant wearing a singlet and black trousers. He asked him from where he came. He said he had come from Kuala Lumpur by bus and wanted to go to Pontian. This made the witness suspicious because the bus service had been suspended on account of a curfew that had been imposed and he took him on his bicycle to Labis police station. Inspector Liew Kooi Loon said that he was at Labis police station when Haron brought the appellant to him. He searched the appellant and in his trouser pocket found an identity card, $298 in $1 Malaysian currency notes, a compass and a whistle. The compass was a plastic marching compass part of the case of which had been broken and from which the card and needle were missing. In fairness to the appellant it is to be observed that this is the one point on which he contradicted any of the prosecution evidence. In the course of giving evidence regarding the admissibility of a statement said to have been made by him to the police he said that nothing was found on him except his identity card, a handkerchief and some money, more than $300.

Finally there was a statement alleged to have been made by the appellant to a police officer on 11th September, a week after his arrest. The appellant said that this statement was elicited from him by improper means or alternatively that he did not make it at all, and its admission constitutes one of his grounds of appeal which will be considered later. But if it was admissible it amounted to a complete confession of the charges against him. Its effect was as follows.

He was 23 years of age and his home was in Pontian where he was employed as a rubber tapper. In April, 1964, a friend invited him to go to Indonesia for military training and he agreed. He and some others were picked up by a fishing boat and taken to a small island called Balai where they found other Malaysians and some Indonesians. More Malaysians arrived and after some weeks training some 42 of them were taken to a military camp at Bandoeng where they were trained as parachutists and in the use of firearms and explosives.

On 29th August, 41 of the Malaysians were taken to Jakarta. On 1st September 10 of these, including the appellant, and some 40 Indonesians left Jakarta in an aircraft which landed 4 or 5 hours later. At Bandoeng the appellant had been provided with a sten gun and ammunition. At Jakarta he was given two handgrenades and when the aircraft next landed he was given $300 in $1 Malaysian currency notes. About an hour after the aircraft took off the second time a signal was given to jump from the aircraft and the appellant was 16th to jump. When he landed he did not see any of his companions so he went to sleep. At dawn he hid his sten gun, ammunition and grenades and started to look for his friends. He did not find them although he heard gun-fire. He passed another night in the jungle and the next morning he started to find a way out of the jungle with the intention of returning to Pontian. On his way he met a Malay who took him to the police.

Now, putting aside for the moment the alleged statement by the appellant to the police, the prosecution evidence made out that in the early morning of 2nd September an Indonesian aircraft carrying a party of armed men, the majority of them members of the Indonesian forces, entered the airspace of the State of Johore. And about 2 a.m. when the aircraft was in the air over Labis in that State the armed men left it and proceeded to earth by means of parachutes. The appellant was one of these men and before he left the aircraft he was in possession of a sten gun, a quantity of ammunition for it, two handgrenades, about $300 in $1 Malaysian currency notes, a compass and a whistle. At that time it was a matter of such common knowledge that we must take judicial notice of it that the Republic of Indonesia was conducting hostilities against Malaysia, and was not conducting hostilities against any other neighbouring country. Two days later the appellant was found near Labis. He was then alone and was not in possession of any arms or ammunition but he was in possession of a broken compass, a whistle and $298 in $1 Malaysian notes. When asked by a casual wayfarer from where he came he said he had come from Kuala Lumpur (which is some 125 miles away) by bus but at least part of that statement was untrue for the bus service had been suspended. Except as regards possession of the broken compass and the whistle, on which the trial judge believed the prosecution witness who spoke to it, none of that evidence was contradicted and in our view it was sufficient to support the convictions.

On top of the evidence which made out these facts there was the statement alleged to have been made to the police but although it fully supported the other evidence it did not add to it except to show that the appellant was still in possession of his arms and ammunition when he landed but hid them.

Proceeding to the grounds of appeal, it is not necessary to deal with some of these which are the same as were advanced in the previous appeal (*Tan Hua Lam* v. *Public Prosecutor* [1]).

It was urged that the airspace of the State of Johore is not part of the security area established by the Proclaimation of 17th August, 1964. For reasons stated in the previous appeal we do not accept this.

Again, it was urged that although the expedition was in fact and was intended to be an invasion, the members of it, apart from Lieutenant Sutikno, had no knowledge of its true nature until they were ordered to jump but were under the impression that it was a training exercise. In the circumstances there could be no question of any intention to act in a manner prejudicial to the public security of this country. For the reasons we have stated in connection with the previous appeal and which it is not necessary to repeat we are of the opinion that this point is without substance.

In the present case the argument has been taken a little further by urging that even if the object was invasion, as it clearly was, there was no evidence, as to what particular purpose, if any, prejudicial to public security the invaders intended to effect. Having regard to the facts of the case and the conditions of the time this argument deserves no better treatment than the somewhat unkind observation made by counsel for the Public Prosecutor that it was clearly not a "goodwill mission".

That brings us to so much of the grounds of appeal as relates to the statement which the appellant is alleged to have made to the police regarding which there was an acute conflict of testimony at the trial.

The appellant was arrested on 4th September and the statement, if it was made at all, was made on 11th September.

Inspector Lim said that about 11 p.m. on 11th September he interviewed the appellant with the assistance of Corporal Wong as interpreter. The appellant was not handcuffed and appeared to be quite at ease and in normal physical condition. Neither of the police officers was armed. He ascertained what was the Chinese dialect spoken by the appellant. The appellant spoke in the Teochew dialect which the witness understood slightly. He then read out, phrase by phrase, the statutory form of caution prescribed by section 75(1) of the Internal Security Act and this was interpreted to the appellant. The appellant then made a statement which was interpreted into English by the interpreter and written down by the witness. The witness did not at any time use any force or hold out any inducement to the appellant and he was satisfied that the statement was made freely and voluntarily. He did not detect any hitch in the process of interpretation.

Inspector Lim's evidence was corroborated by the interpreter. He said that he spoke in a mixture of the Teochew and Hokkien dialects but he was satisfied that he and the appellant understood each other perfectly. Some attempt was made by counsel for the appellant to argue that by reason of the mixture of languages spoken by this witness and by reason of the appellant being Teochew-speaking there was a probability that the caution as administered by this witness was not understood by the appellant and so could not have been said to have been administered to him at all. Apart from the point that the appellant denied that any caution at all was administered to him, the court interpreter, who was called as a witness by the defence, said that there is a close similarity between the Teochew and Hokkien languages and that in this country nobody speaks either pure Teochew or pure Hokkien and that a person whose language is Teochew can understand Hokkien and *vice versa*. We are satisfied that the point is without substance, as was the trial judge to whom the same argument was addressed.

The appellant's story was, or rather his stories were, entirely different.

He said that on the day of his arrest he was questioned by 2 Chinese as to whether he was one of the paratroopers. He denied this but the two Chinese assaulted him. They struck him on the stomach for about 15 minutes. Then three other Chinese came and struck him and went on striking him till blood came out of his mouth. He fell down on the floor. They then kicked him on the legs, buttocks and on the ribs for about 10 minutes. Then his head was banged against the wall. About an hour later he was again beaten. This was at Labis. The same night he was taken to Johore. During the night he fainted and was taken to hospital where he was given injections and medicine. The next 2 days he remained in Johore Bahru. On 9th September, that is 5 days after his arrest, he was again questioned at Johore Bahru and again beaten. The following day he was taken to Segamat where he was told that the next day a statement would be taken from him and if he did not cooperate he would be sent back to Johore Bahru where he would be beaten again. The following night he was taken before Inspector Lim and Corporal Wong in handcuffs. Corporal Wong spoke to him in Hokkien. He was not cautioned but was told another prisoner had made a statement. He himself then made a statement which was recorded. He was confused and frightened. That was his evidence in chief; but in cross-examination he denied that he made any statement.

The trial judge believed the evidence of Inspector Lim and Corporal Wong and disbelieved that of the appellant and he accordingly admitted the statement in evidence.

With this we see no cause to quarrel. As regards the question of whether or not the statement was ever made, and as regards what happened at the time it was made, if it was made, the evidence of the appellant was contradicted by that of Inspector Lim and Corporal Wong. The issue was clearly one of credibility and we must

accept the trial judge's finding.

As regards the antecedent beatings alleged by the appellant, although his evidence was not contradicted in terms it is difficult to see how any reliance could be placed upon it. Apart from such minor difficulties as that when asked to account for the absence of bruises on his person as a result of injuries he had suffered he said he was struck on the stomach only, which was not what he had said earlier, and that no efforts seem to have been made to call any evidence from the Johore hospital as to his being treated there, there was the change in his story which went to the root of it. He started by saying that he made a statement while he was upset by previous ill-treatment and as a result of a threat; then he completely changed his story and said he did not make any statement at all. It is axiomatic when a witness is proved to have spoken untruthfully on one or two points the whole of his evidence is not necessarily discredited. It is, however, a different position where, as here, a witness while in the witness box changes the whole nature of his evidence regarding the fundamental matter on which he is giving evidence.

In our view the statement was properly admitted. We would, however, add that we are satisfied that had it been wrongly admitted either by reason of having been obtained by improper means or by reason of not having been made at all the case would clearly fall within the proviso to section 60(1) of the Courts of Judicature Act, 1964, for in our view no reasonable judge after properly directing himself could have failed to convict the appellant on the rest of the evidence to which no objection could be taken (see *Stirland* [3]).

The appeals are dismissed.

Appeals dismissed.

TAN SEE BOON v. PUBLIC PROSECUTOR

[F.C. (Thomson L.P., Ong Hock Thye Ag.C.J. (Malaya) and Suffian J.) December 28, 1965]

[K.L. — Federal Court Criminal Appeal No. X4 of 1965]

Internal Security — Possession of firearms and ammunition — Consorting with members of Indonesian armed forces — Evidence of Indonesian military personnel — Treated as evidence of accomplices — Allegation that accused had changed intention and formed innocent intention to go home — Admissibility of statements — Courts of Judicature Act 1964, s. 60(1) — Internal Security Act, 1960, ss. 57(1) & 58(1).

Internal Security — Security area — Whether airspace forms part of.

The appellant was convicted on three charges of consorting with Indonesian armed forces possession of a rifle and possession of ammunition. It was alleged that he took part in the Indonesian invasion near Labis during the night of 1st/2nd September, 1964. The grounds of appeal were (1) that whatever the appellant did that might be regarded as unlawful was done in the airspace above Johore and that there was a complete lack of criminal intention on the part of the appellant because when he was in the airspace he did not know that he was over Malaysian soil; (2) that the appellant after landing from the aircraft had changed any previous intention which might be inferred from the circumstances of his presence in the aircraft and had formed a new and wholly innocent intention to go home; (3) that the appellant had been convicted on the uncorroborated evidence of accomplices and that the trial judge's reasons for this were unsatisfactory; (4) that the appellant's statement to the police was wrongly admitted in evidence, because he had been subjected to threats and questioning for intelligence purposes before the statement was recorded.

Held: (1) in view of the decision of *Tan Hua Lam* v. *Public Prosecutor*,[1] the first ground of appeal could not succeed;

(2) there was no evidence of any change of heart on the part of the appellant prior to the time after his landing on Malaysian soil when he failed to make contact with his companions and in any event a mere change of intention on the part of the appellant cannot afford a ground of defence;

(3) in the circumstances of this case the judge was justified in relying on the evidence of the Indonesian soldiers and even if they are to be treated as accomplices, he gave forceful reasons for accepting their uncorroborated evidence;

(4) the statement of the appellant was in the circumstances wrongly admitted but the case fell clearly within the proviso to section 60(1) of the Courts of Judicature Act because no reasonable judge could have failed to convict the appellant on the rest of the evidence and so there was no miscarriage of justice.

Cases referred to:—

(1) *Tan Hua Lam* v. *Public Prosecutor* [1966] 1 M.L.J. 147.

(2) *Law Kiat Lang* v. *Public Prosecutor* [1966] 1 M.L.J. 215.

(3) *Wong Pooh Yin* v. *Public Prosecutor* [1954] M.L.J. 189.

(4) *R.* v. *Lynch* (1903), 19 T.L.R. 163; [1903] 1 K.B. 444.

(5) *R.* v. *Stirland* (1944), 30 Cr.App.R. 40, 46.

FEDERAL COURT.

T. T. Rajah for the appellant.

Nik Saghir bin Mohamed Noor (Deputy Public Prosecutor) for respondent.

Cur. Adv. Vult.

Thomson L.P.: This is another appeal arising out of the Indonesian invasion near Labis during the night of 1st/2nd September, 1964, with which we were concerned in the cases of *Tan Hua Lam* v. *Public Prosecutor* [1] and *Law Kiat Lang* v. *Public Prosecutor*.[2]

On the morning of 2nd September the present appellant was arrested near Labis and he was thought to have been one of the armed party commanded by Lieutenant Sutikno who had left by parachute the aircraft which figured in the previous two cases. In consequence he was prosecuted on the following three charges under the Internal Security Act, 1960:—

"*1st Charge*: That you between 2.00 a.m. and 10.00 a.m. on the 2nd day of September, 1964, in a Security Area as proclaimed by the Yang di-Pertuan Agong vide